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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,869	04/19/2001	Rob Pieterse	01176/LH	6265

1933 7590 07/14/2006

FRISHAUF, HOLTZ, GOODMAN & CHICK, PC  
220 Fifth Avenue  
16TH Floor  
NEW YORK, NY 10001-7708

EXAMINER
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VAN HANDEL, MICHAEL P

ART UNIT	PAPER NUMBER
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2623

DATE MAILED: 07/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/807,869	<b>Applicant(s)</b> PIETERSE, ROB	
	<b>Examiner</b> Michael Van Handel	<b>Art Unit</b> 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 5, 6, 9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5, 6, 9, and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/17/2006 has been entered.

### ***Response to Amendment***

1. This action is responsive to an Amendment filed 2/17/2006. Claims **1, 2, 5, 6, 9, and 10** are pending. Claims **1** and **5** are amended. Claims **3, 4, 7, and 8** are canceled. Claims **9** and **10** are new. The examiner hereby withdraws the objection to claims **5-8** in response to the applicant's clarification of the differences between the claims.

### ***Response to Arguments***

1. Applicant's arguments filed 2/17/2006 with respect to claims **1** and **5** have been considered, but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 2623

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 5, 6, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Logan et al. in view of Cluts.

Referring to claims 1 and 5, Logan et al. discloses a system for the distribution of audio files, comprising:

- a central database with audio files (col. 4, l. 21-25 & Fig. 1);
- local processing means for processing and playing the audio files (col. 3, l. 32-36);
- a transmission network for the transmission of the audio files from the central database to the local processing means (col. 6, l. 60-67 & col. 7, l. 1-3);
- a processor for selecting a collection of files from the database by means of a selection algorithm and storing that selection in a selection file (col. 5, l. 37-49; col. 10, l. 38-45; & col. 20, l. 31-35), as well as for transferring, via the transmission network to the local processing means of a subscriber, replicas of both the selection file and the selected files themselves (col. 5, l. 37-49), the local processing means playing the selected files via playing means under control of the selection file (col. 7, l. 7-12 & col. 10, l. 38-48), wherein the processor selects, on the basis of one or more selection algorithms, different collections of files and stores these selections in different selection files (col. 5, l. 37-49 & col. 20, l. 31-34), which are transferred to the local processing means via the transmission network, the local processing means comprising a local selection device for selecting, according to the desire of the subscriber, one of those different selection files (col. 7, l. 22-25); and wherein the

local selection device stores consecutive choices made by the subscriber, in a log file (col. 7, l. 41-45), the processor reading out the selections stored in the local selection device and periodically replacing part of the collection of selected files by files selected once again from the database (col. 13, l. 48-52).

Logan et al. does not disclose distributing video files. Cluts discloses a continuous media server (CMS) file storage and delivery system that can manage on-demand access to stored audio and video data (col. 6, l. 56-63). It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify Logan et al. to include the delivery of video data, such as that taught by Cluts in order to provide a user with more entertainment options.

Referring to claims 2 and 6, the combination of Logan et al. and Cluts teaches the system according to claims 1 and 5, respectively, wherein the processor periodically replaces, under control of a refreshing algorithm, part of the collection of the selected files by files which are selected once again from the database (Logan et al. col. 13, l. 29-44, 48-52).

Referring to claims 9 and 10, the combination of Logan et al. and Cluts teaches the system according to claims 1 and 5, respectively, wherein the files that are refreshed have been actually selected by the subscriber (the examiner notes that the program segments that the subscriber has played are tagged for replacement)(col. 13, l. 48-52).

### ***Conclusion***

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Foladare et al. discloses a programmable radio subscription system for receiving selectively defined information.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Van Handel whose telephone number is 571.272.5968. The examiner can normally be reached on Monday-Friday, 8:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on 571.272.7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**Note to Applicant**

Art Units 2611, 2614 and 2617 have changed to 2623. Please make all future correspondence indicate the new designation 2623.

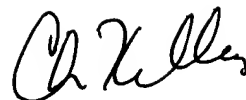
Michael Van Handel  
Examiner  
Art Unit 2623

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MVH

A handwritten signature in black ink, appearing to read "Chris Kelley".

**CHRIS KELLEY**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2600**